



UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

11 DANILO DEL VALLE, an } Case No. 09-cv-01940 JW
12 Individual, and JENNIFER DEL } ORDER DENYING DEFENDANT
13 VALLE, an Individual, } GMAC'S MOTION TO DISMISS
14 Plaintiffs, } AS MOOT
15 vs. }
16 INDYMAC FEDERAL BANK, }
17 F.S.B., a Delaware Corporation; }
18 NDEX WEST, LLC, a Delaware }
19 Corporation; GMAC MORTGAGE, }
20 LLC, a Delaware Corporation; }
ALLIANCE BANCORP, a California }
Corporation, and DOES 1 through 10, }
inclusive, }
Defendants. }

21 Presently before the Court is Defendant GMAC's Motion to Dismiss. (Docket Item No. 9,
22 15.) Defendant originally filed this Motion on July 22, 2009 and upon reassignment of the case to
this Court, Defendant renoted its Motion on August 3, 2009. On October 5, 2009, Plaintiffs filed
an Amended Complaint. (Docket Item No. 27.)

23 Rule 15(a) provides that a party may amend his pleading once as a matter of course at any
time before a responsive pleading is served. A motion to dismiss is not a responsive pleading
within the meaning of Rule 15(a). Fed. R. Civ. P. 15(a); Allwaste, Inc. Hecht, 65 F.3d 1523, 1530
(9th Cir. 1995).

24 Plaintiffs' October 5 Amended Complaint is their first Amended Complaint. Accordingly,
25 Defendant GMAC's Motion to Dismiss is denied as moot. The October 26, 2009 hearing on the
Motion is VACATED.

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Dated: October 20, 2009


JAMES WARE
United States District Judge